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Via Certified Mail and Email, Return Receipt Requested

The Honorable Walt Maddox
Mayor
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2201 University Boulevard
Tuscaloosa, AL 35401
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Steven Shaw
Chief Operator
Hilliard N. Fletcher Water Resource Recovery Facility
City of Tuscaloosa
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July 28, 2023

RE: Request for Meeting and Notice of Intent to File Citizen Suit under Clean Water Act against the City of Tuscaloosa

Dear Mayor Maddox, Mr. Shaw, and Mr. Grammer:

Black Warrior Riverkeeper (Riverkeeper) and Friends of Hurricane Creek (FOHC) (collectively "Conservation Groups") have identified extreme environmental compliance issues with the Hilliard N. Fletcher Wastewater Resource Reclamation Facility (WRRF) and accompanying sewage system. Conservation Groups request a meeting with the City of Tuscaloosa (City) to collaboratively address these important compliance issues described below.

However, in order to preserve our claims in the event litigation becomes necessary, pursuant to the Clean Water Act § 505, 33 U.S.C. § 1365, and 40 C.F.R. Part 135, Subpart A, this letter also serves as notice that after the expiration of sixty (60) days Conservation Groups intend to file suit against the City of Tuscaloosa for the discharge of pollutants from its sewage system in violation of NPDES Permit No. AL0022713 issued to the Hilliard N. Fletcher WRRF by the Alabama Department of Environmental Management (ADEM) pursuant to Alabama's NPDES

permit program approved by the U.S. Environmental Protection Agency under Clean Water Act § 402(b), 33 U.S.C. § 1342(b). The City is in violation of the Clean Water Act and the Alabama Water Pollution Control Act (AWPCA), § 22-22-1 *et seq.*, Code of Alabama 1975, and the regulations thereunder. However, Conservation Groups believe that these issues can be addressed in a more efficient manner through a meeting and negotiation process, and that litigation can be avoided. We ask you to contact the undersigned to schedule an initial meeting.

Since September 2017, the City has reported over 400 illegal sanitary sewer overflows and 888 permit violations on its discharge monitoring reports (DMRs). *See* Exhibits A and B. Additionally, the City has discharged undisclosed pollutants, according to Riverkeeper's sampling. We have compiled a comprehensive interactive map of the SSOs of the area, together with income and racial data, for your reference.[1] The majority of these SSOs flowed into beloved streams where citizens recreate such as Hurricane Creek, Cypress Creek, Cottondale Creek, and the Black Warrior River. One such example is Hurricane Creek Park, a popular swimming hole and recreation area for the people of Tuscaloosa. Approximately 2,067,916 gallons of raw sewage has been spilled in Cottondale Creek (just upstream from Hurricane Creek), Hurricane Creek, and Little Hurricane Creek since 2017.[2]

For decades, the City has allowed its sanitary sewer system to fall into disrepair. Cracked and broken sewers, leaking manholes, uncleared blockages from grease and other materials, pump station failures, inadequate maintenance, and other issues cause the discharge of untreated sewage into nearby streams, streets, and even residents' homes and backyards. These defects also allow rainwater to enter and overwhelm the system, a problem referred to as inflow & infiltration. These overflows have led to approximately 42,405,547 gallons of sewage spilled in the streets, backyards, and streams of Tuscaloosa since 2017.[3] Conservation Groups intend to file a lawsuit because, as a result of these chronic problems, the City regularly violates the Clean Water Act by discharging untreated, unpermitted sewage into nearby waters.

I. SUMMARY OF VIOLATIONS

a. Sanitary Sewer Overflows

The City is in violation of §§ 301 and 402 of the Clean Water Act (33 U.S.C. §§ 1311 and 1342). These laws mandate that the City shall not discharge pollutants to waters of the United States except in compliance with a permit issued pursuant to the NPDES program.[4] On the dates set out in Exhibit A attached, the City has discharged pollutants to waters of the United States without a permit that authorizes these discharges, in violation of 33 U.S.C. §§ 1311 and 1342. As this Exhibit shows, since 2017 the City has reported approximately 300 sanitary sewer overflows

[1] Tuscaloosa WWTP SSOs, interactive map available at https://selcgis.maps.arcgis.com/apps/mapviewer/index.html?webmap=fc2a827e72854718a2e82ef6196233dd (last visited July 28, 2023).
[2] *See* Exhibit A. This number was obtained by adding the total amount of sewage spilled into Cottondale Creek, Hurricane Creek, and Little Hurricane Creek as self-reported by the City in its SSO reports.
[3] *See* Exhibit A. This number was obtained by adding up the total amount of sewage spilled based on the City's SSO reports.
[4] *See also* Ala. Admin. Code r. 335-6-6-.03(1) ("No person shall discharge pollutants into waters of the state without first having obtained a valid NPDES permit.").

(SSOs) that reach surface waters. Because the infrastructure issues that precipitate these problems remain unaddressed, these violations are likely to continue.

b. NPDES Permit Violations

The City is in violation of certain conditions of NPDES Permit No. AL0022713 due to its failure to "at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit."[5] The City has also violated the effluent limitations mandated by NPDES Permit No. AL0022713, as revealed by the City's DMRs and Riverkeeper's sampling. Finally, the City has inaccurately reported certain violations as required by the permit. Any violation of these permit conditions constitutes a violation of the federal Clean Water Act—and are grounds for an enforcement action. These violations are likely to continue.

c. Unpermitted Discharge of Undisclosed Pollutants

The City is also in violation of §§ 301 and 402 of the Clean Water Act (33 U.S.C. §§ 1311 and 1342) for discharging unpermitted, undisclosed pollutants at Outfall DSN 002 at the Hilliard WRRF. These undisclosed pollutants include Chloride, Aluminum, Barium, Manganese, Iron, and Sodium. The City is in a continuing state of non-compliance each day it discharges without a permit.

II. PERSONS RESPONSIBLE FOR VIOLATIONS

The City of Tuscaloosa is the party responsible for the violations alleged in this Notice Letter, as defined by section 502(5) of the Clean Water Act. The City owns and operates the Hilliard N. Fletcher WRRF facility and has operational control over all activities at the facility, including operation of the sewer system, and is responsible for managing the facility and the system in compliance with the Clean Water Act. The City is thus identified as the person[6] responsible for all violations described in this notice letter.

III. PERSONS GIVING NOTICE

Pursuant to 40 C.F.R. § 135.3(a), notice is hereby provided that the name, address and telephone numbers of the persons giving notice of intent to sue are as follows:

Black Warrior Riverkeeper
712 37th St. S
Birmingham, AL 35222
(205) 458-0095

[5] NPDES Permit No. AL0022713 at Part II.A.1.
[6] "Person" includes municipalities under the Clean Water Act, 33 U.S.C. § 1362(5).

Friends of Hurricane Creek
5600 Holt Peterson Rd.
Tuscaloosa, AL 35404
(205) 310-3739

Riverkeeper is a nonprofit organization organized under the laws of the State of Alabama that seeks to protect and restore the Black Warrior River and its tributaries through education, advocacy, and pollution prevention. It is a member organization with over 6,000 members, some of whom live, work, and/or recreate in the area of the violations discussed herein, and who are harmed by those violations.

FOHC is a 501(c)(3) organization dedicated to the overall health and well-being of Hurricane Creek and all of its inhabitants that live in the watershed. Founded in 1993, the mission of FOHC is to stop the flow of major pollution sources and to begin the process of recovery for Hurricane Creek. FOHC has members, some of whom live, work, and/or recreate in the area of violations discussed herein, and who are harmed by those violations.

IV. IDENTIFICATION OF LEGAL COUNSEL

Riverkeeper and FOHC are represented by legal counsel in this matter. Pursuant to 40 C.F.R. § 135.3(c), the contact information for those providing legal counsel is as follows:

Sarah Stokes
Ryan S. Anderson
Southern Environmental Law Center
2829 2nd Ave S., Ste. 282
Birmingham, AL 35233
(205) 745-3060

Eva Dillard
Black Warrior Riverkeeper, Inc.
712 37th St. S
Birmingham, AL 35222
(205) 458-0095.

V. BACKGROUND

A. Sanitary Sewer Overflows (SSOs)

According to EPA, a sanitary sewer overflow (SSO) is an untreated or partially treated sewage release from a sanitary sewer system.[7] SSOs can have numerous causes including blockages, line breaks, sewer defects that allow excess stormwater to overload the system, lapses in system operation and maintenance, inadequate sewer design and construction, and power

[7] EPA, *Report to Congress: Impact and Control of CSOs and SSOs* at ES-2 (Aug. 2004) ES-2 – ES-3, available at https://www.epa.gov/sites/default/files/2015-10/documents/csossortc2004_full.pdf (last visited July 12, 2023) [hereinafter referred to as "EPA Report"].

failures.[8] SSOs that reach waters of the United States are point sources discharges.[9] Thus, SSOs are prohibited unless authorized by a NPDES permit.[10] Additionally, SSOs indicate poor maintenance and operation of a sewer system, and thus may violate NPDES permit conditions.[11] Principal pollutants present in SSOs typically include microbial pathogens (*e.g.*, bacteria), oxygen depleting substances, total suspended solids (TSS), total dissolved solids (TDS), toxics, nutrients, and floatables.

SSOs negatively impact both the environment and human health. SSOs can lead to violations of water quality standards, which in turn can result in swim and fish advisories. Additionally, SSOs can cause fish kills. Impacts on human health can be severe. The most serious impacts to human health occur when people make contact with water or ingest water or fish that have been contaminated by SSO discharges. Direct contact with land-based discharges is also a potential exposure pathway.[12] EPA estimates that 1.8 million to 3.5 million people fall ill each year from swimming in waters contaminated by SSOs.[13] Certain demographic groups face greater risk of exposure, including people who recreate in SSO-impacted waters, subsistence fishers, and wastewater workers.[14] Pregnant women, children, individuals with compromised immune systems, and the elderly may be at greater risk than the general population for serious or fatal outcomes resulting from exposure to pollutants found in SSOs.[15]

The frequency and intensity of SSOs will increase as population growth puts more strain on outdated sewer systems, as increasing amounts of impervious surface leads to more stormwater runoff, and as climate change increases the frequency and severity of storms.[16] Tuscaloosa has shown "significant population growth" in recent years.[17] The 2022 Census shows a gain of more than 10,000 people for Tuscaloosa since 2020, and the City plans to keep growing.[18] Thus, it is critical that these infrastructure issues be addressed now in order to avoid a catastrophic outcome.

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[8] *Id.*

[9] *See Foti v. City of Jamestown Bd. of Pub. Utils.*, No. 10-CV-575-RJA-HBS, 2011 WL 4915743, at *16 (W.D.N.Y. 2011).

[10] *See* 33 U.S.C. § 1311; *Nat'l Ass'n of Home Builders v. Def. of Wildlife*, 551 U.S. 644, 650 (2007); *see also United States v. Velsicol Chem. Corp.*, 438 F.Supp. 945, 946–47 (W.D. Tenn.1976) (finding CWA violation where pollutant was discharged into municipal storm sewer system which flowed into navigable waters); *United States v. Ortiz*, 427 F.3d 1278, 1281 (10th Cir.2005) (considering a storm drain that flowed into a river a point source); *United States v. Agosto–Vegau*, 617 F.3d 541, 550 (1st Cir.2010) (considering a storm sewer that flowed into a creek a point source).

[11] EPA Report at ES-2; *see* NPDES Permit No. AL0022713 at Part II.A.1 ("The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures.").

[12] EPA Report at 6-14.

[13] Natural Resources Defense Council, *Swimming in Sewage* at 2 (Feb. 2004), available at https://www.nrdc.org/sites/default/files/sewage.pdf (last visited July 12, 2023).

[14] EPA Report at 6-15.

[15] *Id.* at 6-15 – 6-18.

[16] *Swimming in Sewage*, *supra* note 13, at v-vi.

[17] City of Tuscaloosa, *Framework: A dynamic guide for Tuscaloosa* at 3 (Feb. 2021), available at https://framework.tuscaloosa.com/wp-content/uploads/2021/03/FrameworkExecSummary_FINALforweb.pdf (last visited July 28, 2023).

[18] *See* Chelsea Barton, *Tuscaloosa is Growing: 10,000 New Residents Between 2020, 2022 Census*, WVUA 23 (June 21, 2033) available at https://www.wvua23.com/tuscaloosa-is-growing-10000-new-residents-between-2020-2022-census/ (last visited July 28, 2023).

B. Inflow & Infiltration

Inflow and Infiltration ("I&I") refers to the entry of extraneous water into a sanitary sewer system. Inflow is the entry of rainwater into the sanitary sewer system through specific stormwater connections.[19] Examples of inflow include misdirected stormwater entering the system through roof leaders, yard and area drains, manhole covers, and other drainage systems.[20] Infiltration refers to the seepage of groundwater into the sewer system through cracks, leaks, or defects in sewer infrastructure.[21] Together, I&I is responsible for the majority of SSO volume in the United States.[22]

Excessive water in a sanitary sewer system can rapidly escalate into a significant environmental problem. I&I overloads the sewer system, leading to SSOs in which untreated sewage releases into streams and communities. I&I also reduces treatment efficiency and incurs additional costs for managing and treating excess water.[23]

I&I is a major factor contributing to the SSOs in the Tuscaloosa system. Since September 2017, the system experienced approximately 146 SSOs directly attributed to weather events.[24] Furthermore, during wet weather events since September 2017, the City spilled approximately 39,314,968 gallons of sewage. [25]

VI. CLEAN WATER ACT

Congress enacted the Clean Water Act "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[26] To that end, section 301(a) of the Clean Water Act[27] prohibits the discharge of pollutants from a point source to waters of the United States except in compliance with, among other conditions, an NPDES permit issued pursuant to section 402 of the Clean Water Act.[28] Notably, each violation of a permit—and each discharge that is not authorized by a permit—is a separate violation of the Act.[29]

Under the Clean Water Act, the phrase "discharge of a pollutant" means "any addition of any pollutant to navigable waters from any point source."[30] The term "pollutant" includes "solid waste, . . . sewage, garbage, sewage sludge, . . . chemical wastes, biological materials . . . and

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[19] EPA Report at GL-3.
[20] *Id.*
[21] *Id.*
[22] *Id.* at ES-5.
[23] *Inflow and Infiltration*, City of Fond Du Lac, https://www.fdl.wi.gov/wastewater/programs-initiatives/inflow-infiltration/ (last visited July 7, 2023).
[24] *See* Exhibit A.
[25] *Id.*
[26] 33 U.S.C. § 1251(a).
[27] *Id.* § 1311(a).
[28] 33 U.S.C. § 1342.
[29] *See* 33 U.S.C. § 1319(d) ("penalty . . . per day for each violation"); *Sierra Club, Haw. Chapter v. City & Cnty. of Honolulu*, 486 F.Supp.2d 1185, 1190–91 (D. Haw. 2007) (summarizing holdings).
[30] 33 U.S.C. § 1362(12)(A).

industrial, municipal, and agricultural waste."[31] The term "point source" includes any "discernible, confined and discrete conveyance" from which pollutants may be discharged, including pipes, ditches, channels, tunnels, conduits, wells, discrete fissures, and containers.[32] The point source need not be the original source of the pollution; all that is required is that it conveys the pollution to a water of the United States (WOTUS).[33]

VII. VIOLATIONS OF THE CLEAN WATER ACT

The City is in violation of §§ 301 and 402 of the Clean Water Act (33 U.S.C. §§ 1311 and 1342). These laws mandate that the City shall not discharge pollutants to waters of the United States except in compliance with a permit issued pursuant to the NPDES program.

A. Unpermitted Discharges from Sanitary Sewer Overflows

The Clean Water Act expressly prohibits unpermitted discharges, *i.e.*, any discharge of pollutants except through the outfalls designated in an NPDES Permit. In the case of the City, it is permitted to discharge from two point sources—Outfall DSN 001-1 and Outfall DSN 002-1 at the Hilliard N. Fletcher WRRF.[34] The individual permit for the WRRF outfalls also prohibit the discharge of pollutants from sources not expressly authorized:

> The discharge of a pollutant from a source not specifically identified in the permit application for this permit and not specifically included in the description of an outfall in this permit is not authorized and shall constitute noncompliance with this permit.[35]

The discharge of raw sewage and industrial wastewater into waters of the United States constitutes such prohibited discharges. As detailed in Exhibit A, the City has discharged pollutants without a permit approximately 300 times into waters of the United States or waters of the State. Each of these SSO events constitutes an unpermitted discharge under the Clean Water Act.

Conservation Groups have identified over 400 SSO events in Tuscaloosa, some of which do not reach a waterway. This indicates a chronic SSO problem in the City, caused by systemic failures in the system. These SSOs indicate a recurrent pattern of Clean Water Act violations, *i.e.*, unpermitted discharges. The City is in continuing violation because the underlying causes of these SSOs are unaddressed and will cause recurrent SSOs throughout the City's system.

A comparison of the City of Tuscaloosa's SSO data to that of other municipalities highlights the severity of the City's failures to properly maintain its sewer system. Based on a survey data of twenty-five different municipal agencies across the nation over the course of five years, the average municipality reports an average of 4.5 SSOs per 100 miles of sewer line per year.[36] The

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[31] *Id.* at § 1362(6).
[32] *Id*. at § 1362(14).
[33] *See id*. at § 1362.
[34] NPDES Permit No. AL0022713 at Part I.
[35] *Id.* at Part II.D.1.c.
[36] Black & Veatch LLP, American Society of Civil Engineers, U.S. Environmental Protection Agency Office of Wastewater Management, Optimization of Collection System Maintenance Frequencies and System

City of Tuscaloosa operates approximately 566 miles of collection system.[37] The City's average number of SSOs per 100 miles from 2018 to 2022 dwarfs this benchmark value at an astonishing approximate 13.3 SSOs per 100 miles of sewer line.[38] In fact, were it to be measured against the aforementioned twenty-five municipalities, the City of Tuscaloosa would rank third worst for average number of SSOs per 100 miles of sewer line.[39] When considering even the City's best performing year, 2021 at approximately 11.1 SSOs per 100 miles of sewer line, the City's average still far surpasses the benchmark value by more than double.[40] Bleakest yet is the City's worst performing year of the sample, 2020, during which the City averaged approximately 18.2 SSOs per 100 miles of sewer line, a staggering fourfold of the benchmark average.[41] This represents a systemic problem for the City of Tuscaloosa.

B. Failure to Maintain Sewage Collection Infrastructure

Adequate maintenance and management of the City's sanitary sewer system is a touchstone requirement under its NPDES Permit and the Clean Water Act. The City's individual NPDES permit requires that:

> The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities only when necessary to achieve compliance with the conditions of the permit.[42]

It is clear that the City has violated this obligation. The City's improper maintenance has led to blockages, pipe leaks, and equipment failures. Out of approximately 416 SSOs reported since 2017, the City reported that over half have been caused by debris/grease, equipment failure, and sewer line defects—obvious operations and maintenance problems.[43] In addition, approximately

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Performance, EPA Cooperative Agreement #CX 824902-01-0, at 6-5 (Feb. 1999), available at https://www.epa.gov/sites/default/files/2015-10/documents/optimization-finalreport.pdf (last visited July 14, 2023). The original value shown in this chart was for one mile of sewer line; for ease of comparison, this value was multiplied by 100 to determine this benchmarking data.

[37] City of Tuscaloosa, *Sewer*, https://www.tuscaloosa.com/city-services/water/sewer (last visited July 17, 2023).

[38] *See* Exhibit A. This was calculated by summing the SSOs in each year and dividing by 566 miles to find the number of SSOs per one mile. This value was multiplied by 100 to find the number of SSOs per 100 miles.

[39] *See* Black & Veatch LLP, American Society of Civil Engineers, U.S. Environmental Protection Agency Office of Wastewater Management, Optimization of Collection System Maintenance Frequencies and System Performance, EPA Cooperative Agreement #CX 824902-01-0, at 6-5 (Feb. 1999), available at https://www.epa.gov/sites/default/files/2015-10/documents/optimization-finalreport.pdf (last visited July 14, 2023).

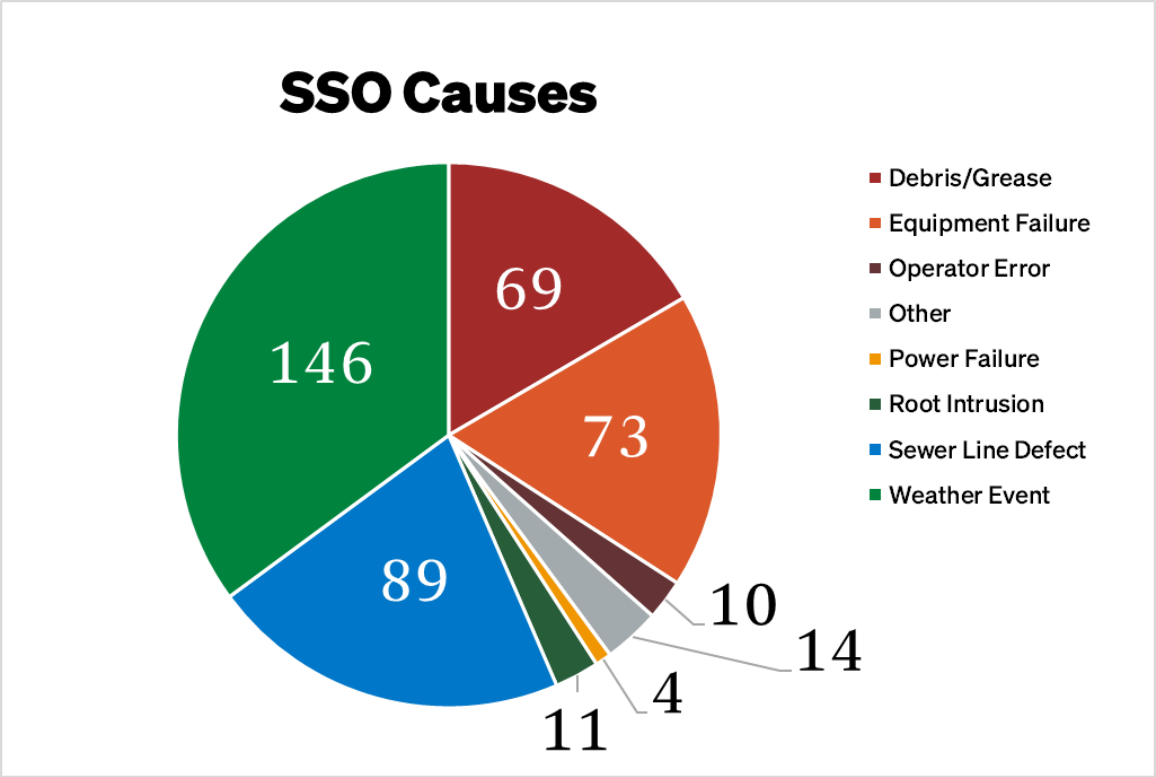
[40] *See* Exhibit A.

[41] *See id.*

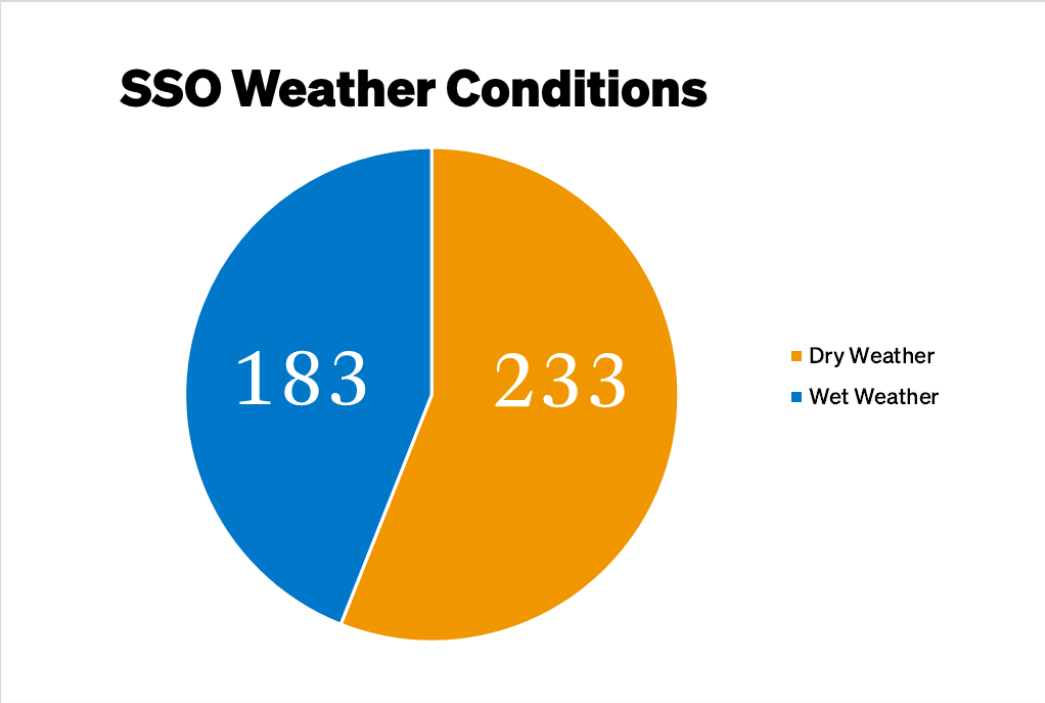
[42] NPDES Permit No. AL0022713 at Part II.A.1.

[43] *See* Exhibit A. This is a compilation of self-reported SSOs obtained from ADEM's e-File system. Conservation Groups sorted certain categories based on the self-reported cause of the SSO. For example, SSOs resulting from excessive rainfall and other weather events were categorized as "Weather Event." SSOs resulting from a break or other issue with a sewer line were categorized as a "sewer line defect." SSOs resulting from equipment failure at a lift station or otherwise were categorized as "equipment failure."

seventy-three SSOs are attributed to equipment failure. As demonstrated by the below chart, most causes of SSOs (as self-reported by the City) are indicative of an operations and maintenance issue:



Further, the fact that the majority of the City's SSOs occur during dry weather, as opposed to wet weather, further indicates that the City has failed to operate and maintain the system:



If we are unable to resolve these violations in a mutually satisfactory manner, Conservation Groups intend to bring suit because the City has failed to properly operate and maintain its system as required by its NPDES Permit and the Clean Water Act. Improper maintenance of the System has caused a chronic SSO problem, leading to over 400 SSOs since September 2017. This problem is caused by the City's failure to invest in adequate maintenance and repairs.

Additionally, certain lift stations have fallen into disrepair. For example, Lift Station 42 appears to experience chronic hydrogen sulfide leaks that have corroded the surrounding galvanized steel fencing and poles. Hydrogen sulfide is a safety hazard, as it is highly flammable and explosive.[44] This particular lift station is located steps away from a Dollar General. However, the City installed odor-masking agents rather than fix the leaks; this is irresponsible to the public and wastewater workers, as odor-masking agents can fail to alert people to the dangerous gas.[45]

[44] Occupational Health and Safety Administration, Hydrogen Sulfide: Hazards, https://www.osha.gov/hydrogen-sulfide/hazards (last visited July 19, 2023).
[45] *See* Team Aquafix, Hydrogen Sulfide Treatment in Wastewater, https://teamaquafix.com/hydrogen-sulfide-gas-in-wastewater/#:~:text=Many%20wastewater%20facilities%20that%20experience%20sulfide%20problems%20generally,of%20the%20reduction%20of%20sulfur%20into%20hydrogen%20sulfide (last visited July 19, 2023).

Fence hole at Lift Station 42. Taken July 18, 2023. Notice the effect of the gas on the fence.

Fence hole at Lift Station 42. Taken July 18, 2023.

Odor-masking agents at Lift Station 42. Taken approximately Dec. 14, 2022, by John Wathen, Hurricane Creekkeeper.

Additionally, Lift Station 40 consistently smells of rotten-eggs, and residents live about 300 feet away from the station. This station has had serious and consistent overflows in the last five years with visible evidence consistent with hydrogen sulfide leaks.

Aerial view of Lift Station 40. Taken Oct. 21, 2019, by John Wathen, Hurricane Creekkeeper.

Galvanized fence at Lift Station 40. Taken July 28, 2023 by John Wathen, Hurricane Creekkeeper.

Another example of a failure to maintain the sewage infrastructure is the catastrophic failure of the line leaving the Mercedes Benz plant in November 2022. Metal finishing, the industrial process contributing to Mercedes' discharge, involves a host of pollutants, including metals, halogenated solvents, ketones, aromatic hydrocarbons, and acids.[46] The metal finishing industry is also a suspected source of per- and poly-fluoroalkyl substances (PFAS), more commonly referred to as "forever chemicals."[47] Certain types of PFAS, including perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), have serious health impacts including developmental effects to fetuses and infants, kidney and testicular cancer, liver malfunction, hypothyroidism, high cholesterol, ulcerative colitis, lower birth weight and size, obesity, decreased immune response to vaccines, reduced hormone levels, and delayed puberty.[48]

Untreated wastewater from failure at the Mercedes line. Taken Nov. 8, 2022, by John Wathen, Hurricane Creekkeeper.

[46] EPA, *Pollution Prevention for the Metal Finishing Industry: A Manual for Pollution Prevention Technical Assistance Providers* at 15 (Feb. 1997), available at https://nepis.epa.gov/Exe/ZyPDF.cgi/20000VPB.PDF?Dockey=20000VPB.PDF (last visited July 12, 2023).
[47] Memorandum from Radhika Fox, Assistant Administrator, EPA to EPA Regional Water Division Directors, Regions 1-10 (Dec, 5, 2022), available at https://www.epa.gov/system/files/documents/2022-12/NPDES_PFAS_State%20Memo_December_2022.pdf (last visited July 12, 2023).
[48] Blum et al., The Madrid Statement on Poly- and Perfluoroalkyl Substances (PFASs), 123 ENV'T HEALTH PERSP. 5, 107 (May 2015), available at https://doi.org/10.1289/ehp.1509934; EPA, Fact Sheet on EPA's Proposal To Limit PFAS In Drinking Water, at 5 (Apr. 4, 2023), https://www.epa.gov/system/files/documents/2023-04/Fact%20Sheet_PFAS_NPWDR_Final_4.4.23.pdf (last visited July 12, 2023).

Untreated wastewater from failure at the Mercedes line. Taken Nov. 7, 2022, by John Wathen, Hurricane Creekkeeper.

Failing pipe at Mercedes line. Taken Nov. 16, 2022, by John Wathen, Hurricane Creekkeeper.

Corroded pipe discarded from Mercedes line. Taken Nov. 22, 2022, by John Wathen, Hurricane Creekkeeper.

These photographs illustrate the severity of the City's aging sewage infrastructure and the catastrophic impact it can have on the environment. Further, it is evidence of the violation of a condition of the City's permit, which expressly prohibits introduction into treatment works of "[p]ollutants which will cause corrosive structural damage to the treatment works, or dischargers [*sic*] with a pH lower than 5.0 s.u., unless the works are specifically designed to accommodate such discharges."[49] Until the City prioritizes upgrading this failing and aging system, failures like this will become more common and will result in irreversible environmental contamination and human health impacts.

These are merely examples of a systemic and chronic failure by the City to adequately maintain and fund its sewage infrastructure. This neglect violates Part II.A.1 of the City's NPDES permit; these violations constitute non-compliance with the Clean Water Act. Additionally, there is evidence that the City has allowed pollutants from indirect dischargers which cause corrosive structural damage to the treatment works in violation of Part II.H.2 of its permit. If we cannot reach a mutually agreeable resolution, Conservation Groups intend to sue the City for violations of the Clean Water Act based on this non-compliance.

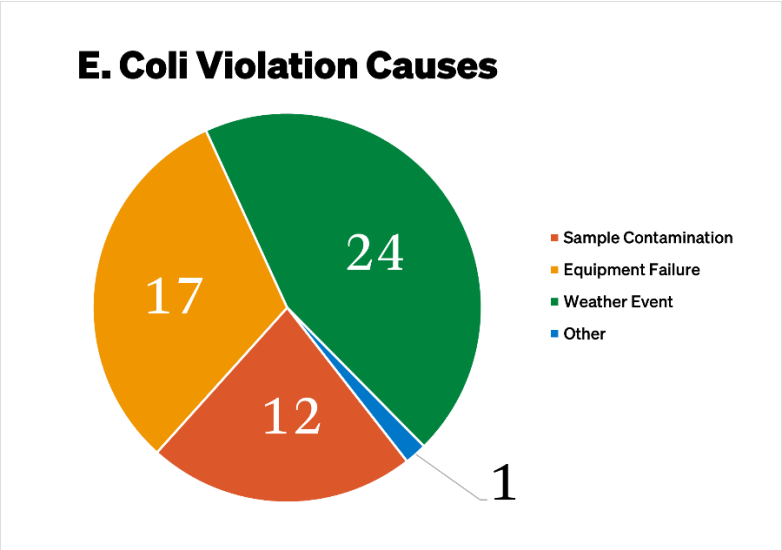
C. Failure to Maintain Treatment Infrastructure

In addition to failing to maintain sewage collection infrastructure, the City has also failed to maintain its wastewater treatment infrastructure at the Hilliard WRRF. This likewise violates Part

[49] NPDES Permit No. AL0022713 at Part II.H.2.

II.A.1 of the NPDES Permit. An overview of violations reported by the City shows 888 permit violations reported in the City's Discharge Monitoring Reports since 2017.[50]

The causes of non-compliance stated in the non-compliance forms reveal the City's failure to maintain the treatment facility, which includes "adequate operator staffing." For example, out of fifty-two *E. Coli* violations, seventeen were caused by equipment failure; twelve were caused by sample contamination.[51]



And out of ten ammonia violations, six were caused by equipment failure. Reported pH, dissolved oxygen, and Total Kjeldahl Nitrogen violations were caused by equipment failure.[52] This high level of equipment failure and operator error demonstrates a clear deficit of "effective performance," "adequate operator and staff training," and "adequate laboratory and process controls" at the Hilliard WRRF. This neglect violates Part II.A.1 of the City's permit which constitutes non-compliance with the Clean Water Act. If we cannot reach a mutually agreeable resolution, Conservation Groups intend to sue the City for violations of the Clean Water Act based on this non-compliance.

D. Numeric Effluent Limitation Violations at the Facility

The City is in violation of the provisions referenced above by operating its facility in a manner which discharges pollutants to the waters of the United States and waters of the State in excess of the limitations contained in NPDES Permit No. AL0022713. The City has violated its NPDES permit by exceeding its discharge limitations on certain dates as detailed in Exhibit B. This Exhibit reveals that the City has reported 888 permit violations. The City has exceeded its *E. Coli*, Total Suspended Solids, Total Ammonia Nitrogen, and pH discharge limits on numerous occasions. Sometimes the City itself reports *E. Coli* readings that are thirty-two times what the permit allows.

[50] *See* Exhibit B.
[51] *See* Exhibit C.
[52] *See id.*

Additionally, **the Riverkeeper has collected *E. Coli* from Outfall DSN 002-1 that is 192 times what the permit allows.** Riverkeeper's sampling in July, reveals effluent limitation violations of the City's *E. Coli* limits. Analytical results show the following permit violations:

City of Tuscaloosa NPDES Permit (AL0022713) Violations				
Effluent Limitation Violation – Riverkeeper's Sampling				
Date	**Parameter**	**Permit Limit**	**Discharge**	**# of Violations**
7/12/23	*E. Coli*	298 col/100mL	12,000 cols/100 mL	1
7/18/23	*E. Coli*	298 col/100mL	57,300 col/100 mL	1

If we cannot find a mutually agreeable solution, Conservation Groups intend to sue based on these violations.

F. Inaccurate Reporting

Additionally, the City has failed to file required non-compliance forms. The permit states that "[i]f, for any reason, the Permittee's discharge does not comply with any limitation of this permit, then the Permittee shall submit a written report to the Director or Designee, as provided in Provision I.C.2.c or I.C.2.e [NCF and SSO reporting requirements]."[53] There have been instances where the City recognizes a violation in its DMR report, but has neglected to submit the corresponding non-compliance form.

Date of NCF Violation:	**Pollutant type:**	**Description of Violation:**
Jan. 2023	Total Suspended Solids	DMR identified two TSS violations. No NCFs were filed.
Jan. 2023	*E. Coli*	DMR identified 10 E. Coli violations. Only 7 NCFs were filed.
Dec. 2022	*E. Coli*	DMR identified 2 E. Coli violations. Only one NCF was filed.
Dec. 2022	Total Suspended Solids	DMR identified 2 TSS violations. No NCFs were filed.
Aug. 2022	*E. Coli*	DMR identified 2 E. Coli violations. Only one NCF was filed.
July 2022	*E. Coli*	DMR identified 2 E. Coli violations. Only one NCF was filed.
June 2022	*E. Coli*	DMR identified 1 E. Coli violation. No NCFs were filed.

[53] NPDES Permit No. AL0022713 at Part I.C.2.b.

There have also been instances where the City failed to cite the cause of the effluent exceedance as mandated by the permit.[54] The permit states that the non-compliance form must include "a description of the discharge and cause of noncompliance."[55] On October 27, 2021, the City did not meet its minimum daily pH levels, and it did not cite the cause of the non-compliance.

Additionally, the City has inaccurately reported the number of exceedances on its DMRs. On multiple occasions, the number of exceedances has indicated one violation where there were both monthly and weekly or daily average exceedances.

Period of Violation:	**Pollutant:**	**Description of Violation:**
Jan. 2020	Total Suspended Solids	"No. Ex" indicates 1 violation. Both monthly and weekly averages were exceeded.
April 2020	*E. Coli*	"No. Ex" indicates 1 violation. Both monthly and maximum daily averages were exceeded.
June 2022	*E. Coli*	"No. Ex" indicates 1 violation. Both monthly and maximum daily averages were exceeded.

These violations are likely to continue because the City's failure to adequately staff, operate, and maintain the WRRF and system is ongoing. Unless we can reach an agreeable solution, Conservation Groups will file suit on these aforementioned reporting violations.

G. Unpermitted Discharge of Undisclosed Pollutants

The City is also in violation of §§ 301 and 402 of the Clean Water Act (33 U.S.C. §§ 1311 and 1342). The Clean Water Act generally prohibits discharges of "any pollutant" to waters of the United States.[56] The NPDES permitting program, implemented in Alabama, is a limited exception to that prohibition,[57] but discharges under the program cannot be approved unless they are adequately disclosed.[58] EPA has stressed the need for disclosure of pollutants that may be discharged:

> [D]ischargers have a duty to be aware of any significant pollutant levels in their discharge. . . . Most important, [the disclosure requirements] provide the information which permit writers need to determine what pollutants are likely to be discharged in significant amounts and to set appropriate permit limits. . . . [P]ermit writers need to know what pollutants are present in an effluent to determine appropriate permit limits in the absence

[54] *Id.* at Part I.C.2.c.1.
[55] *Id*.
[56] 33 U.S.C. § 1311(a).
[57] *See Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 650 (2007).
[58] *See In re Ketchikan Pulp Co.*, 7 E.A.D. 605 (EPA 1998).

of applicable effluent guidelines.[59]

The EPA Environmental Appeals Board's decision in *In re: Ketchikan Pulp Company* further emphasized the importance of disclosure,[60] and this reasoning has been adopted by the Eleventh Circuit. In *Black Warrior Riverkeeper v. Black Warrior Minerals, Inc.*, the Eleventh Circuit stated:

> [A] citizen may sue for violations of section 1316 when the alleged violator, although a permit holder, discharges pollutants *that were not disclosed* to the permit-issuing authority. Those discharges would not be contemplated by the permit and would not come within the absolute defense provided by section 1342(k).[61]

As seen below, the City has on at least two occasions discharged Chloride, Aluminum, Barium, Manganese, Iron, and Sodium that was not permitted, nor disclosed as part of the City's permit application. Riverkeeper collected the samples of the discharges of pollutants out of DSN 002 on the dates identified below. These are violations of the Clean Water Act and NPDES Permit No. AL0022713, as each constitutes an unpermitted discharge and the "discharge of a pollutant from a source not specifically identified in the permit application for this permit and not specifically included in the description of an outfall in this permit."[62] The City is liable for every day that it discharges without a permit.[63] The discharges outlined below are not authorized by and constitute noncompliance with the Clean Water Act and NPDES Permit No. AL0022713.

City of Tuscaloosa NPDES Permit (AL0022713) Permit Violations				
Unpermitted Discharge of Pollutants				
Date	**Parameter**	**Limit**	**Discharge**	**# of Violations**
7/12/23	Chloride	No Discharge	31.6 mg/L	1
7/12/23	Aluminum	No Discharge	0.5 mg/L	1
7/12/23	Barium	No Discharge	0.27 mg/L	1
7/12/23	Manganese	No Discharge	0.149 mg/L	1
7/12/23	Iron	No Discharge	0.173 mg/L	1
7/12/23	Sodium	No Discharge	39 mg/L	1
7/18/23	Aluminum	No Discharge	0.208 mg/L	1
7/18/23	Manganese	No Discharge	0.048 mg/L	1
7/18/23	Iron	No Discharge	0.109 mg/L	1
7/18/23	Sodium	No Discharge	42.2 mg/L	1
7/18/23	Chloride	No Discharge	36.6 mg/L	1

[59] Consolidated Permit Application Forms for EPA Programs, 45 Fed. Reg. 33,516, 33,526-31 (May 19, 1980).
[60] *See In re Ketchikan Pulp Co.*, 7 E.A.D. at 605.
[61] 734 F.3d 1297, 1304 (11th Cir. 2013) (emphasis added) (citing *Piney Run Pres. Ass'n v. Cnty. Comm'rs of Carroll Cnty.*, 268 F.3d 255, 269 (4th Cir. 2001)).
[62] NPDES Permit No. AL0022713 at Part II.D.1.c.
[63] *See Carr v. Alta Verde, Indus., Inc.,* 931 F.2d 1055, 1063 (5th Cir. 1991) (holding that a discharger "who violates the [Clean Water] Act by discharging without a permit . . . remains in a continuing state of violation until it . . . obtains a permit).

VIII. REQUEST FOR MEETINGS

The Conservation Groups request a meeting with the City and its representatives to work out a process to resolve these issues through negotiation. Whenever possible, our preference is to work with dischargers to address important environmental compliance concerns. Based upon a review of documents in ADEM's "eFile" system, together with field work performed by the Conservation Groups, we have identified the following topics of concern we would like to address with the City. We consider the list below to represent a reasonable, but not exclusive, starting point for our discussion. If these issues can be solved collaboratively, there will not be a need for Conservation Groups to file suit.

1. Collection System

The number and volume of SSOs the City experiences indicates that much important work remains to be done on the collection system. And, although the City has sought funding for some upgrades, we encourage the City to perform comprehensive assessments of the collection system and to make these assessments publicly available. The City's July 15, 2020 Master Plan (Plan) spreadsheet shows that approximately $36,000,000 has been spent or authorized primarily for the collection system in recent years.[64] In addition, we note that the City obtained loans in 2022 from ADEM's State Revolving Fund (SRF) of at least $7,605,000 and $1,990,100 to repair certain lift stations (3, 10, 11, 21) and to make repairs along the Mercedes Sewer Force Main and the 39th Street sewer line.[65] ADEM's *Final CW ARPA/SRF Details as of 3/13/2023* shows that the City has received $10,845,100 in total funding to date from the 2023 SRF program, with $1,250,000 of that total in the form of a grant or principal forgiveness and $9,595,100 in a loan.[66] The project description is "wastewater system improvements," so it is not clear whether the funding is for collection system or treatment plant work.[67]

Can the City share what its plans are to prioritize and fix these and other chronic overflow sites, including a budget and funding source? Does the City have a comprehensive list of problem sites, and does it have them ranked by importance with regard to current and future plans for maintenance and upgrades? The Master Plan suggested that it would be updated in the near future; Conservation Groups would like to understand what improvements from the Master Plan have been completed and request an update on the status of the Plan.

We have received complaints and identified significant failures associated with Lift Stations 42, 41, 40 and 10 which chronically overflows. In addition, Lift Stations 42, 41, 40, and 39 are a source of chronic odor and hydrogen sulfide gas as shown above. JVC Road has a manhole that repeatedly overflows and is the site of a recent catastrophic failure. We would like to

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[64] Letter from Jarod Milligan, City of Tuscaloosa, to Sandra Lee, Alabama Dep't of Env't Mgmt. (July 15, 2020), available at http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104336154&dbid=0 [hereinafter Milligan Letter].

[65] Ala. Dep't of Env't Mgmt., *2022 Clean Water State Revolving Fund and Bipartisan Infrastructure Law Intended Use Plans*, available at https://adem.alabama.gov/programs/water/srfreports/FY2022CWSRFBASEIUP.pdf and https://adem.alabama.gov/programs/water/srfreports/FY2022CWSRFBILIUP.pdf.

[66] Ala. Dep't of Env't Mgmt., *CW ARPA/SRF Details as of 3/13/2023*, available at https://adem.alabama.gov/programs/water/srfreports/CWProjectAnalysis.pdf.

[67] *Id*.

understand whether the City has performed a comprehensive lift station assessment. Do the lift stations have backup pumps and generators installed?

Because of the high number of SSOs, the 2022 Municipal Water Pollution Prevention (MWPP) Annual Report indicates that the City is in the action range based on ADEM's scoring.[68] For the year, the report identifies twenty SSOs due to wet weather and forty-eight SSOs due to mechanical failure. It acknowledges that I&I is a problem but does not mention a long-term study. Review of SSO reports reveals at least twelve locations with multiple wet weather SSOs and six locations with multiple dry weather SSOs, most of which are in similar locations as the wet weather SSOs. This seems to indicate a real issue with I&I, as well as maintenance issues. Has there been a comprehensive study of the I&I problem? Are there flow meters that have been installed in parts of the system? What monitoring system is used to detect SSOs? Has it reviewed its collection system with a specific eye toward pretreatment compliance by SID industrial dischargers which could be a potential driver of line corrosion? This Annual Report also refers to a bar screen project to be implemented in 2023—is that ongoing?

2. Treatment System

While the collection system appears to have been prioritized for repairs recently, many issues at the City's treatment plant are left apparently unaddressed. The Master Plan proposes $40,000,000 of spending to the treatment plant.[69] This appears to be a move in the right direction, but we understand Tuscaloosa has a history of only partially approving the water and sewer capital budget. The City must commit to authorizing necessary funds to remediate the treatment plant. Again, if the City has updated the Plan since 2020, it would be helpful to see what projects proposed then have been funded or completed as well as what projects remain.

Conservation Groups would also like to discuss the City's Fiscal Year 2023 Budget and the projects that remain unfunded and underprioritized.[70] A number of improvements at the Hilliard Fletcher WRRF were marked as unfunded initiatives, including installation of new blowers in the north aeration basin; additional high volume/high head bypass pump; area lighting upgrades; pre-air grit removal; and crane servicing and repair.[71] Why are these projects marked as unfunded? What options did the City explore for funding such initiatives? Can the City additionally share the Water and Sewer Fund 10-Year Plan mentioned in the 2023 Fiscal Budget?[72]

3. Capacity

Based on annual reports, new customer disclosures, and dry weather flows, the system has added approximately 34,698 customers since 2018.[73] This increase in customers is significant for

[68] City of Tuscaloosa, 2022 Municipal Water Pollution Prevention (MWPP) Annual Report, at 21 (May 24, 2023).
[69] Milligan Letter, *supra* note 64.
[70] *See* City of Tuscaloosa, *Fiscal Year 2023 Adopted Budget* (Sept. 30, 2022), available at https://assets.caboosecms.com/media/14891329_2023-budget-book.pdf (last visited July 28, 2023).
[71] *Id.* at 255-56.
[72] *Id.* at 7.
[73] This information was compiled from new customer disclosures in the annual Municipal Water Pollution Prevention Plans (MWPPs) for the City of Tuscaloosa – Hilliard N. Fletcher Water Resource Recovery Facility for

a system the size of Tuscaloosa and should be the driving force for the City's capital program. In some states, the City would be approaching the point where regulators would impose a new connection moratorium. That is why it is essential for the City to prioritize and fund the necessary repairs outlined by this letter.

The February 17, 2021 Framework Comprehensive Plan calls 1) "to maintain a plan for water & wastewater infrastructure investment to support desired growth patterns;" 2) for a "Wastewater System Plan;" 3) for a "formal multi-year Capital Improvements Plan;" and 4) for a "wastewater system hydraulic model."[74] Conservation Groups have not been able to access these plans. Providing such plans would help facilitate this negotiation.

4. Operations and Maintenance

There are a number of operations and maintenance issues Conservation Groups would like to discuss. This topic is of utmost importance because, as demonstrated above, over half of the City's SSOs have been caused by debris/grease, sewer line defects, or equipment failure.[75] The fact that SSOs caused by fat, oil, and grease (FOG) are not decreasing is likely a result of system growth and ineffective FOG reduction. What steps has the City taken to implement FOG reduction and does the City have a plan in place that is being implemented and enforced?

The City has reported 888 permit violations since November of 2017. The majority of these violations are violations of the State *E. Coli*, Total Suspended Solids, or Nitrogen, Ammonia standard. A number of bacteria violations have been blamed on high flows. Does the treatment plant have a high flow management plan? As you know, UV-based disinfection is usually defeated by high TSS in the effluent resulting from solids washout from secondary clarifiers. What process control steps does the treatment plant take to retain solids in the system when they are expecting high flows?

We also note that the City has had ammonia (NH4) violations in the past due to an aeration basin being out of service.[76] Yet, upgrades to the aeration basin were marked as unfunded in the City's 2023 Fiscal Year Budget.[77] What plans does the City have to fund these upgrades? Does the treatment plant have a contingency plan and process control strategy for maintaining compliance when various treatment units are off-line?

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the years 2019-2023. *See, e.g.*, City of Tuscaloosa, 2021 Municipal Water Pollution Prevention Annual Report, at 22 (Apr. 22, 2022) (disclosing 10,129 new customers in 2021).

[74] City of Tuscaloosa, https://framework.tuscaloosa.com/wp-content/uploads/2021/03/FrameworkPlan_FINALforweb.pdf (last visited July 28, 2023).

[75] *See supra* Section VII.B.

[76] *See* ADEM, *NPDES/SID Noncompliance Notification Report (Form 421)* (Feb. 24, 2023) (on file with ADEM and available on eFile); ADEM, *Alabama Department of Environmental Management (ADEM) NPDES/SID Non-compliance Notification Form* (Nov. 20, 2020) (on file with ADEM and available on eFile); ADEM, *Alabama Department of Environmental Management Water Division-Industrial and Municipal Sections Noncompliance Notification Form* (May. 24, 2019) (on file with ADEM and available on eFile); ADEM, *Alabama Department of Environmental Management Water Division-Industrial and Municipal Sections Noncompliance Notification Form* (Nov. 30, 2018) (on file with ADEM and available on eFile); ADEM, *Alabama Department of Environmental Management Water Division-Industrial and Municipal Sections Noncompliance Notification Form* (Nov. 30, 2017) (on file with ADEM and available on eFile).

[77] *See* City of Tuscaloosa, 2023 Adopted Budget, *supra* note 70, at 255.

Finally, the City reports low pH violations in October and November 2021. These violations can be attributed to a number of possible causes: damaged activated sludge biology, unreported or slug industrial user discharges, improper decanting of aerobic digesters, inadequate pretreatment, or high NH4 influent concentrations resulting in depletion of alkalinity. Has the City identified the cause(s) and addressed any problems?

The problems outlined above suggest the need for evaluating and revising the City's capacity, management, operation and maintenance plan to address these and other issues in the system. Conservation Groups would like to discuss this plan with the City.

5. Cottondale Creek TMDL and Hurricane Creek Park

In August 2022, the Final Total Maximum Daily Load (TMDL) for pathogens for Cottondale Creek, Tuscaloosa, Alabama was published. Section 303(d) of the Clean Water Act requires permitting authorities to identify impaired waters, or waters that are not meeting their designated uses, and determine a TMDL for pollutants causing the impairment.[78] Cottondale Creek is listed as impaired due to pathogens (*E. Coli*) from Hurricane Creek to its source.[79] It was first included on the 303(d) List for *E. Coli* in 2016.[80] The designated use for Cottondale Creek is Fish & Wildlife, a designation which carries some of the least stringent accompanying water quality standards. Yet, Cottondale Creek is still impaired for *E. Coli*.

One common source of pathogens is "leaking sewer systems in urban areas."[81] According to ADEM:

> Sanitary sewer overflows (SSOs) have the potential to severely impact water quality and can often result in the violation of water quality standards. It is the responsibility of the NPDES wastewater discharger or collection system operator for non-permitted "collection only" systems to ensure that releases do not occur. Unfortunately, releases to surface waters from SSOs are not always preventable or reported. From review of ADEM files, it was found that 25 SSOs were reported from 2019 to 2021 within the Cottondale Creek watershed. *The numerous SSOs are considered to be a source of pathogens to Cottondale Creek.*[82]

Because the City's SSOs are a primary source of pathogens in Cottondale Creek, we would like to discuss with the City what kinds of investigations and upgrades have been considered to remediate this impairment. As noted above, SRF funds have been allocated in part to repair and/or upgrade Lift Station 10 in the Cottondale Creek watershed. What progress has been made on upgrading this station? Are there any other upgrades the City has explored to remediate SSOs in the Cottondale Creek watershed?

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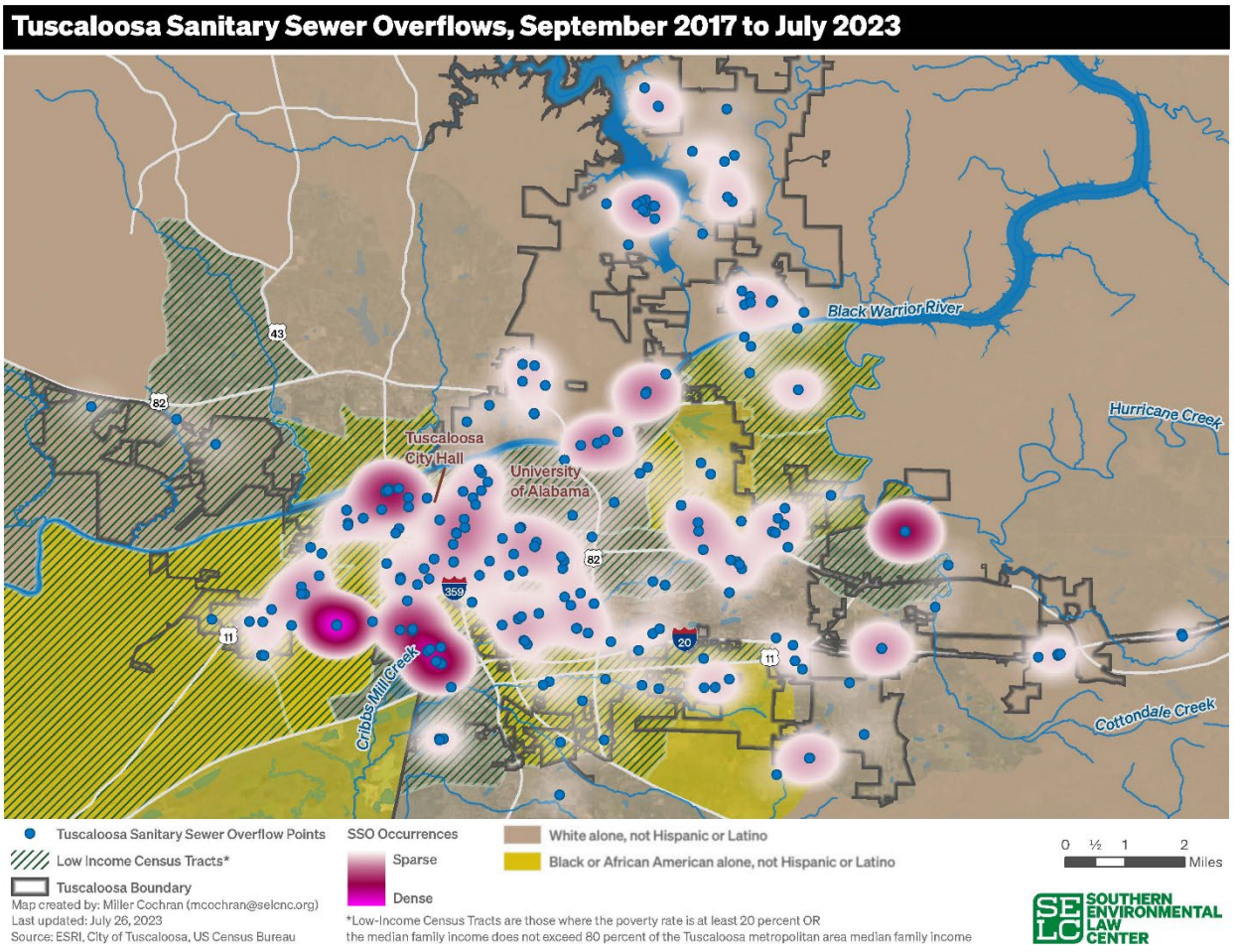
[78] Ala. Dept' of Env't Mgm't, *Final Total Maximum Daily Load (TMDL) for Cottondale Creek*, Assessment Unit ID # AL03160112-0503-100, Tuscaloosa County, Pathogens at 1 (Aug. 2022), available at https://adem.alabama.gov/programs/water/wquality/tmdls/FinalCottondaleCreekPathogensTMDLAugust2022.pdf (last visited July 28, 2023).
[79] *Id.*
[80] *Id.*
[81] *Id.* at 5.
[82] *Id.* at 7 (emphasis added).

Addressing this problem in Cottondale Creek is critical because Hurricane Creek Park, a frequented swimming hole, is located a half mile downstream from where Cottondale Creek flows into Hurricane Creek. These chronic SSOs are impacting the health of the Tuscaloosa community. Raw sewage is making its way into the Hurricane Creek, where families bring their children and grandchildren to recreate and cool off. This is unacceptable. The City must prioritize the health of its citizens and stop these chronic overflows as soon as possible. In the meantime, the City must increase public notification and awareness of SSO events at Hurricane Creek Park and elsewhere.

6. Environmental Justice

The chronic SSO violations happening throughout the City may have environmental justice implications. "Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."[83] In mapping the locations of the SSOs, a disproportionate amount of SSOs occur in predominately Black communities.[84] The areas marked in yellow below are predominately Black communities, and they contain the City's most frequently occurring SSOs (marked in pink).

[83] EPA, *Environmental Justice*, available at https://www.epa.gov/environmentaljustice (last visited July 14, 2023).
[84] Tuscaloosa WWTP SSOs, available at https://selcgis.maps.arcgis.com/apps/mapviewer/index.html?webmap=fc2a827e72854718a2e82ef6196233dd (last visited July 28, 2023).



We would like to discuss the City's plan to prioritize and remediate the City's chronic and severe SSOs in environmental justice areas. What kind of funding opportunities has the City explored for upgrading infrastructure in this area? The Conservation Groups would like to talk with the City about available federal funding for projects in environmental justice communities. In Executive Order 14008, the White House mandated that at least 40% of benefits from certain federal programs flow to disadvantaged communities.[85] A community is defined as "either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals…where either type of group experiences common conditions."[86] The following indicators are used to identify whether a community is disadvantaged:

- Low income, high and/or persistent poverty
- High unemployment and underemployment

[85] Exec. Order 14,008, 86 Fed. Reg. 7619 (Feb. 1, 2021), available at https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/ (last visited July 10, 2023).

[86] Memorandum from Shalanda Young, Acting Director, Office of Management and Budget, Brenda Mallory, Chair, Council of Environmental Quality, Gina McCarthy, National Climate Advisor to Heads of Departments and Agencies, (July 20, 2021), available at https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf (last visited July 17, 2023).

- Racial and ethnic residential segregation, particularly where segregation stems from discrimination by government entities
- Linguistic isolation
- High housing cost burden and substandard housing.[87]

A covered program includes, among other things, "critical clean water and waste infrastructure," including projects which lead to "reduction in the quantity of raw sewage discharged."[88]

We would like to discuss with the City what funding opportunities it has sought to remediate the SSOs in disadvantaged communities. Has the City spoken with ADEM about its eligibility for special funding based on the SSOs experienced by disadvantaged communities, as defined by the White House?

As shown on the map, one of the most frequent SSO locations is at the 4000 block of Cherrystone Circle in West Tuscaloosa. Astonishingly, SSOs at Lift Station 21, located off Cherrystone Circle, make up approximately thirty-two out of 416 total events.[89] We would like to discuss what is causing these chronic overflows and any steps the City has taken to prioritize or address the overflow. We would also like to discuss what kind of public notification the City has engaged in with this community.

Last, we would like to discuss prioritizing upgrades based on environmental justice factors. For example, in a recently proposed Consent Decree Modification between the EPA and the Puerto Rico Aqueduct and Sewer Authority, sewer defects are prioritized for upgrades based on certain criteria.[90] Criteria includes high SSO density, which is used to account for the environmental and community impacts of recurring SSOs in an area, and location at area of concern, which includes areas with frequent citizen complaints.[91] SSOs located in areas of concern and in areas of high SSO density are ranked higher in priority for upgrades.[92] The City should implement a similar system for prioritizing upgrades.

7. Black Warrior River Public Use Areas

The river and riverfront are increasingly a destination for locals, students, and visitors. As more people visit the river and as more amenities are developed along the riverfront, it is increasingly important for the City to work on stopping SSOs that impact the river. Until SSOs are stopped, it is imperative that the City institute a robust public notification plan for the river and its public use areas, and this is a subject we would like to discuss with the City. SSOs in this area contain raw sewage and industrial chemicals from the two chemical plants upriver—Southern Ionics and Merichem, plus Warrior Asphalt and NUCOR Steel. People deserve prompt notice of

[87] *Id*. Other indicators include distressed neighborhoods, high transportation cost burden and/or low transportation access, disproportionate environmental stressor burden and high cumulative impacts, limited water and sanitation access and affordability, disproportionate impacts from climate change, high energy cost burden and low energy access, jobs lost through the energy transition, and access to healthcare.
[88] *Id.*
[89] *See* Exhibit A (adding up SSO events at or near Cherrystone Circle).
[90] *United States of America v. Puerto Rico Aqueduct and Sewer Authority and the Commonwealth of Puerto Rico*, Civil Action No. 3:15-CV-02283, First Modification of Consent Decree, at App'x 5 (D.P.R. June 29, 2023).
[91] *Id.*
[92] *Id.*

such spills into the river and its tributaries. People commonly fish at Riverview boat ramp, all along the Riverwalk including near Manderson Landing and the old Bama Belle boat dock, on the North side of the river near Oliver Lock, and at the Oliver Dam fishing pier. Boaters access the river at the Riverview boat ramp. The University of Alabama rowing teams are sunrise regulars on the river, and triathlons are increasingly being hosted in the river. People and their pets frequently swim and recreate in the river along the Riverwalk and elsewhere. The City has not been adequately informing the public of its SSOs along the riverfront, and it is high time for this to become a priority. There are too many people coming into harm's way for there to not be a plan in place.

8. Public Notification

We would also like to discuss the City's Public Notification processes and how these might be improved. For example, in the City's non-compliance forms, there are often just latitude/longitude coordinates and a street address. It would be in the public interest for these reports to include the specific lift stations or manholes, if applicable, to be labeled in the reports. These lift stations and their corresponding street addresses (not simply their coordinates) should be made publicly available so citizens can easily see how close a lift station and corresponding overflow are to their homes or businesses.

Additionally, SSOs should be posted on a publicly available website and easily "accessible, searchable, and clearly labeled."[93] As discussed above, clear labeling should include an easily identifiable street location, lift station, or manhole number, in addition to GPS coordinates, to make it easy to locate the SSO in relation to someone's property. Signs should be clearly posted, and if the SSO is close to any specific residences or businesses, flyers should be posted, and oral notification should be attempted. It is also important that the City take measures to identify and adequately inform environmental justice populations, with a specific focus on populations that lack English-language proficiency.

Also, we would like to discuss the City posting SSO notices at downstream public use areas. Hurricane Creek Park and Riverwalk Park are two well-known public use areas, but there are many more such as the Alabama Department of Conservation and Natural Resources Riverview boat ramp and the Army Corps Oliver Dam fishing pier. The City should have a comprehensive list of public use areas, which can be obtained in partnership with Parks and Recreation Authority and other parties, which is used to ensure proper public notification of SSOs is posted at areas downstream of sewage spills. Since there are so many industries tied into the City's wastewater collection system, it is important to note that notifications should explicitly state that raw sewage and industrial chemicals have been spilled when such is the case. It is incumbent upon the City to ensure proper public notification is performed, as a condition of its NPDES permit. The City should have in place an understanding or agreement with the local public health authority and media outlets that their assistance will be critical to in ensure adequate public notice after major SSOs occur.

The Massachusetts Department of Environmental Protection requires facilities to submit a Sanitary Sewer Overflow Plan that includes identification of environmental justice populations

[93] *Id.* at 8-9 (requiring SSO reports to be posted on the government's website and be readily accessible, searchable, and clearly labeled).

and specific website and subscriber-based methods of public notification.[94] For example, the reporter must include the specific URL where the public notification will be posted, the link where the public can subscribe to notifications, and list two media outlets that the permittee will contact to provide public notification (including identification of whether the media outlet serves the EJ population).[95] We would like to discuss whether the City would include some of these components in its reporting system.

IX. NOTICE OF INTENT TO SUE

As described above, the City has been, and continues to be responsible for recurrent violations of the Clean Water Act by (1) discharging pollutants into surface waters without a permit authorizing such discharges; (2) violating its NPDES permit; and (3) discharging unpermitted, undisclosed pollutants. Unless the City agrees to meet with Conservation Groups and an amicable resolution seems likely, or the violations described above are otherwise fully redressed, Conservation Groups intend to initiate a citizen suit against the City following the notice period.

If litigation is necessary, Conservation Groups will seek redress for the violations described in this Notice Letter, including injunctive relief, costs, and attorneys' fees pursuant to 33 U.S.C. § 1365(a), as well as civil penalties pursuant to 33 U.S.C. § 1319(d). The court may assess civil penalties up to $64,618 per day per violation for violations that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023.[96] Each day a violation continues is a separate violation.[97]

In addition, the Clean Water Act authorizes the award of "costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines that such an award is appropriate."[98] A suit may be avoided if these violations have been permanently abated before the expiration of sixty (60) days following the date of this notice. A suit may also be avoided if we can come up with a mutually agreeable plan for addressing these problems.

X. CONCLUSION

If the City has taken any steps to eradicate the violations described above, or if anything in this letter is inaccurate, please let us know. If the City does not advise us of any remedial steps taken during the notice period, we will assume that no such steps have been taken, that there are no material errors in this letter, and that violations are likely to continue. We welcome the opportunity to meet with the City to attempt to resolve these issues within the notice period.

All responses to this letter should be directed to Sarah Stokes, sstokes@selcal.org or 205-745-3060, at the Southern Environmental Law Center.

Thank you for your attention to this matter and we look forward to hearing from you.

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[94] *See* Mass. Dep't of Env't Prot., *Sanitary Sewer Overflow Public Notification Plan*, available at https://www.mass.gov/doc/sanitary-sewer-overflow-public-notification-plan-0/download (last visited July 19, 2023).
[95] *Id.*
[96] Clean Water Act §§ 505(a) and 309(d), 33 U.S.C. §§ 1365(a) and 1319(d); 40 C.F.R. § 19.4.
[97] *See Atlantic States Legal Found. Inc. v. Tyson Foods, Inc.*, 897 F.2d 1128 (11th Cir. 1990).
[98] 33 U.S.C. § 1365(d).

Sincerely,

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